

No. 48.

AMENDATORY BILL.

FEBRUARY 17, 1808.

Read the first time.

FEBRUARY 18, 1808.

Read the first and second time, and committed to a committee of the whole House to-morrow.

A Bill,

Concerning courts martial and courts of inquiry.

1 Sec. 1. *BE it enacted by the Senate and House of Representatives*
2 *of the United States of America, in Congress assembled, That in*
3 *every case where the attendance of any person, not in the military*
4 *or naval service of the United States, shall be necessary as a witness*
5 *before a military or naval court martial, a summons may be issued*
6 *out of any court of the United States, and the clerk of any such court*
7 *shall be, and he is hereby authorized and required, upon due applica-*
8 *tion in writing by the judge advocate, or party officiating as such, or*
9 *by the party accused, to issue such summons, requiring such witness*
10 *to appear, and give evidence before such court martial or court of*

11 inquiry, and upon good and sufficient cause shewn verified by affida-
 12 vit before any judge of any court of the United States, and the same
 13 being certified by such judge, and produced to the clerk to whom
 14 application as aforesaid shall be made for any summons, the said
 15 witness in such summons may be farther directed and required to
 16 exhibit in evidence before such court marshal or court of inquiry,
 17 any paper, document or record in his possession, power or controul;
 18 and in every summons to be issued in virtue of this act, some certain
 19 day shall be appointed for the same to be returned to the proper court
 20 martial or court of inquiry, and for the appearance of the witness.
 21 And every summons as aforesaid shall be directed to the marshal of
 22 the district in which such witness may reside or may happen to be,
 23 and for every fault in not duly serving and returning any summons
 24 as aforesaid, the marshal shall be liable to the same penalties, and to
 25 be proceeded against in like manner, as if he had made such default
 26 in not serving or returning any summons or citation in causes de-
 27 pending in the district court of the United States holden in the dis-
 28 trict or territory whereof he may be marshal.

1 Sec. 2. *And be it further enacted,* That if any person, duly sum-
 2 moned as a witness in pursuance of this act, shall fail to appear and
 3 give evidence before such court martial or court of inquiry, accord-
 4 ing to the tenor of the summons, or shall, in any respect, wilfully
 5 disobey any summons duly issued and served, in pursuance of this
 6 act, or having appeared in obedience to any summons, shall depart
 7 without leave of the court before his examination shall have been
 8 definitively taken down in writing, subscribed and concluded, every

9 such person shall be liable to the same penalties and to be proceeded
 10 against in like manner before any court of the United States, hold-
 11 den for the district or territory where he resided or may have been
 12 found at the time of being summoned, as is provided by law in ca-
 13 ses of default by any witness summoned in civil causes pending in
 14 the courts of the state or territory wherein such witness may reside
 15 as aforesaid, or may have been found and summoned as aforesaid;
 16 and the return of the marshal certifying the service of such sum-
 17 mons, and the certificate on oath of the president of any such court
 18 martial or court of inquiry, and of the judge advocate or person offi-
 19 ciating as such, stating in what respect such summons may have
 20 been neglected or disobeyed, which certificate shall have been en-
 21 tered and recorded in the proceedings of such court martial at the
 22 time of such neglect or disobedience, shall be admitted as evi-
 23 dence of such default in such witness, as aforesaid: *Provided never-*
 24 *theless,* That in case such witness shall satisfy the court before
 25 whom such proceeding against such witness shall be had as afore-
 26 said, that the default imputed to him was produced by sickness or
 27 other inevitable impediment, and was not an act of contempt or wil-
 28 ful disobedience, such witness shall be forthwith discharged from
 29 any farther proceedings thereupon in said court.

1 Sec. 3. *And be it further enacted,* That depositions taken before
 2 a judge of any court of the United States, or before a judge of any
 3 circuit or district court, court of chancery, common pleas, errors
 4 or appeals, or any superior or supreme court of a state or territory,

5 where the deponent or deponents shall reside, or may happen to be,
 6 or before any three or more of five commissioners, to be appointed
 7 and commissioned by a judge of any court of the United States, may
 8 be read in evidence before any such court martial or court of in-
 9 quiry, in relation to any charge where the punishment, upon a defi-
 10 nitive sentence of conviction, may not extend to life or limb, nor to
 11 the cashiering or dismissal of a commissioned officer, and in any
 12 case where the prosecutor or judge advocate and the party accused,
 13 shall have consented in writing to the taking such deposition; and
 14 summons shall issue for witnesses, before every such judge or such
 15 commissioners, for the purpose of giving their depositions, and pro-
 16 ducing papers, documents and records, in like manner as is herein
 17 before prescribed for summoning witnesses before courts martial
 18 and courts of inquiry: *Provided*, That the place appointed for tak-
 19 ing such deposition be within the county where the witness may
 20 reside, or may happen to be found at the time of being summoned:
 21 *And provided also*, That no such deposition shall be read in evi-
 22 dence, unless reasonable notice of the time and place of taking the
 23 same be given to the adverse party, by the party at whose instance
 24 the same may be taken, nor unless the witness shall be and reside,
 25 as well at the time of taking the deposition as of offering the same
 26 in evidence, at a greater distance than _____ miles from
 27 the place of holding such court martial or court of inquiry, or the
 28 same shall have been taken by consent of parties as aforesaid;
 29 nor if the same be taken before commissioners as aforesaid, unless the
 30 party at whose instance such commission may be issued, shall have
 31 given reasonable notice to the adverse party, of the time and place of

31 applying for such commission, and of the name and residence of the
32 judge to whom such application may be made; nor unless such
33 commission be duly issued under the hand and seal of such
34 judge, and attested and countersigned by the clerk of the court
35 to which such judge may belong, with the seal of the court annexed.
36 And the probate or certificate annexed to all such depositions by
37 the territorial or state judge, before whom the same may be taken,
38 may be authenticated as to its being verily the act of such judge, and
39 as to the authority of such judge, by the certificate of the clerk, un-
40 der the seal of that court to which such judge may belong.

1 Sec. 4. *And be it further enacted,* That every person attending
2 as a witness in obedience to any summons issued under this act,
3 shall be entitled to the same compensation, and be privileged
4 from arrest, in like manner as witnesses duly summoned before a
5 circuit court of the United States.